

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**M.P., Appellant**

**and**

**DEPARTMENT OF VETERANS AFFAIRS,  
VETERANS HEALTH ADMINISTRATION,  
Asheville, NC, Employer**

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**Docket No. 15-362  
Issued: April 10, 2015**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge  
ALEC J. KOROMILAS, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On December 8, 2014 appellant filed a timely appeal from a November 14, 2014 decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether appellant met her burden of proof to establish that her left shoulder condition was causally related to a March 5, 2014 employment incident, as alleged.

**FACTUAL HISTORY**

On March 6, 2014 appellant, a 36-year-old nursing assistant, filed a traumatic injury claim (Form CA-1) alleging that she injured her left shoulder on March 5, 2014 as a result of turning a patient in bed.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

On June 16, 2014 appellant filed a claim for wage-loss compensation for the period March 17 through June 14, 2014.

By letter dated June 23, 2014, OWCP indicated that when appellant's claim was received, it appeared to be a minor injury that resulted in minimal or no lost time from work and, based on these criteria and because the employing establishment did not controvert continuation of pay or challenge the case, payment of a limited amount of medical expenses was administratively approved. It indicated that it had reopened the claim for consideration because a claim for wage-loss compensation had been received. OWCP requested additional evidence and afforded appellant 30 days to respond to its inquiries.

Appellant submitted a June 11, 2014 report from Dr. Myron Smith, a Board-certified orthopedic surgeon, who diagnosed left shoulder impingement syndrome with sprain and possible periscapular trigger points. Dr. Smith indicated that appellant was seen for a left shoulder injury that occurred on March 5, 2014 due to lifting a patient at work.

By decision dated August 6, 2014, OWCP denied appellant's claim on the basis that the medical evidence was not sufficient to establish a causal relationship between her left shoulder condition and the March 5, 2014 employment incident.

On September 5, 2014 appellant requested reconsideration and submitted employee health records dated July 22, 2013 through June 26, 2014. She also submitted physical therapy notes dated August 20 through September 10, 2014.

In reports dated July 11 through October 6, 2014, Dr. Smith diagnosed shoulder/arm strain and indicated that appellant continued to suffer from left shoulder pain. He indicated that a magnetic resonance imaging (MRI) scan was consistent with possible superior labral tear and recommended surgery. Dr. Smith advised that appellant would be working full duty until the time of surgery.

By decision dated November 14, 2014, OWCP denied modification of its prior decision.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>2</sup> has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an "employee of the United States" within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA, that an injury<sup>3</sup> was sustained in the performance of duty, as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.<sup>4</sup>

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<sup>2</sup> *Id.*

<sup>3</sup> OWCP regulations define a traumatic injury as a condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected. 20 C.F.R. § 10.5(ee).

<sup>4</sup> See *T.H.*, 59 ECAB 388 (2008). See also *Steven S. Saleh*, 55 ECAB 169 (2003); *Elaine Pendleton*, 40 ECAB 1143 (1989).

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a “fact of injury” has been established. A fact of injury determination is based on two elements. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place, and in the manner alleged. Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury. An employee may establish that the employment incident occurred as alleged, but fail to show that his or her condition relates to the employment incident.<sup>5</sup>

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.<sup>6</sup>

### **ANALYSIS**

OWCP has accepted that the employment incident of March 5, 2014 occurred at the time, place, and in the manner alleged. The issue is whether appellant’s left shoulder condition resulted from the March 5, 2014 employment incident. The Board finds that appellant did not meet her burden of proof to establish a causal relationship between the condition for which compensation is claimed and the employment incident.

In his submitted reports, Dr. Smith diagnosed left shoulder impingement syndrome, sprain, and possible periscapular trigger points. He indicated that appellant was seen for a left shoulder injury that occurred on March 5, 2014 due to lifting a patient at work. Dr. Smith further indicated that an MRI scan was consistent with possible superior labral tear and recommended surgery. He failed to provide a rationalized opinion explaining how lifting a patient at work on March 5, 2014 caused or aggravated appellant’s left shoulder condition. Dr. Smith noted that appellant’s condition occurred while she was at work. However, such generalized statements do not establish causal relationship because they merely repeat appellant’s allegations and are unsupported by adequate medical rationale explaining how her physical activity at work actually caused or aggravated the diagnosed conditions.<sup>7</sup> Thus, the Board finds that the reports from Dr. Smith are insufficient to establish that appellant sustained an employment-related injury.

Appellant further submitted employee health records dated July 22, 2013 through June 26, 2014 and physical therapy notes dated August 20 through September 10, 2014. These documents do not constitute competent medical evidence as they do not contain rationale by a

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<sup>5</sup> *Id.* See Shirley A. Temple, 48 ECAB 404 (1997); John J. Carlone, 41 ECAB 354 (1989).

<sup>6</sup> *Id.* See Gary J. Watling, 52 ECAB 278 (2001).

<sup>7</sup> See K.W., Docket No. 10-98 (issued September 10, 2010).

physician relating appellant's disability to her employment.<sup>8</sup> As such, the Board finds that appellant did not meet her burden of proof with these submissions.

As appellant has not submitted any rationalized medical evidence to support her allegation that she sustained an injury causally related to a March 5, 2014 employment incident, she has failed to meet her burden of proof to establish a claim for compensation.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

### **CONCLUSION**

The Board finds that appellant has not met her burden of proof to establish that her left shoulder condition is causally related to a March 5, 2014 employment incident, as alleged.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the November 14, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 10, 2015  
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>8</sup> See 5 U.S.C. § 8101(2). Section 8101(2) of FECA provides as follows: "(2) 'physician' includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law." See also *Paul Foster*, 56 ECAB 208, 212 n.12 (2004); *Joseph N. Fassi*, 42 ECAB 677 (1991); *Barbara J. Williams*, 40 ECAB 649 (1989).